IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 507 of 2000

Date of decision : 24.9.2007

State of H.P. **Appellant**

Versus

Prem Singh and others **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondents:

Deepak Gupta, J. (Oral)

This appeal is directed against the judgment of Judicial Magistrate Ist Class, Kasauli at Solan in case No. 17/2 of 1999/96 decided on 26.4.2000 whereby he has acquitted the accused of having committed an offence punishable under Sections 341/325/323/506 read with Section 34 IPC.

The prosecution case in brief is that on 28.6.1995 PW-1 Naresh Kumar, son of complainant Ratti Ram was carrying some coal loaded on camels and when he reached the house of Dev Raj at 4.30 p.m. the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

accused stopped the camels and entered into an altercation with PW-1 Naresh Kumar. Thereafter the complainant was informed and he reached the spot of occurrence. When he reached the spot, the accused persons beat up the complainant, Ratti Ram and his teeth was injured in the fight. Ratti Ram filed a complaint and on the basis of this complaint, an FIR was registered. Investigation was carried out and after investigation challan was filed. The accused pleaded not guilty and claimed trial. After trial the accused have been acquitted. Hence this appeal.

PW-1, Naresh Kumar has deposed that camels were stopped by the accused and they abused him and the other persons accompanying him. Thereafter he went to call his father, PW-3, Ratti Ram . When his father came to the spot the accused persons beat his father and broke 2/3 teeth of his father. In cross examination he has admitted that there are about 14 houses in the village and about 100 to 200 persons reside in the village. He has admitted in cross examination that there is long standing enmity and litigation of almost 20 years between his family and the family of the accused.

According to this witness, one Tula Ram was also beaten up by the accused.

PW-3, Ratti Ram, has given a similar version. He, however, states that one Pritam Singh had informed him that the camels being taken by his son had been stopped by the accused. According to him 3/4 of his teeth were broken in the fight. The version of Ratti Ram is not consistent with the version given by him in the FIR in which there is no mention of any teeth being broken. This witness in cross examination has also admitted that there is long standing litigation going on between him and the accused for the last 20 years. In his statement in court, PW-1 states that camels were stopped near the house of Bheem Singh, whereas in the FIR, it has been stated that camels were stopped near the house of Dev Raj. PW-2 and PW-4 who are so called independent witnesses have not supported the prosecution version and in fact they have stated that nothing happened in their presence. Though they have been declared hostile and cross examined at length, nothing material has been elicited in their cross examination.

Even according to the prosecution the alleged occurrence took place in a village having more than 14

houses and about 100 to 200 people. No villagers were associated in the investigation. The two independent eye witnesses examined have not supported the prosecution case. No doubt in the circumstances the court may rely upon the statement of the injured and his family members also, however, in the present case where there is long standing litigation between the parties and enmity between the two sides is writ large, it would not be appropriate to rely upon the statement of complainant and his son. There are material contradictions in the statements of the two witnesses and there are also material improvements made by them in the statements in court. Further, PW-1 has stated that FIR was lodged on the same day, but PW-3 states that FIR was lodged on the next day. This is also a material contradiction. Therefore, the learned lower court rightly did not place any reliance on the statements of these two witnesses. The accused have been acquitted by a well reasoned judgment. I find no reason to interfere in the same. The appeal is dismissed.

September 24, 2007(K) (Deepak Gupta), J.